

Kalpana Nagampalli (KN-2807)  
Stephen E. Feldman (SF-5630)  
FELDMAN LAW GROUP, P.C.  
220 E.42<sup>nd</sup> Street, Suite 3304  
New York, New York 10017  
Phone: 212-532-8585  
E-mail: [kalpana@feldman-law.com](mailto:kalpana@feldman-law.com)

*Counsel for Plaintiff Jason Sheldon*

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

JASON SHELDON,

*Plaintiff,*

v.

PLOT COMMERCE, a corporation,

*Defendant.*

Civil Action No.:

**COMPLAINT AND  
DEMAND FOR JURY TRIAL**

Plaintiff JASON SHELDON, by and through undersigned counsel, pursuant to the applicable Federal Rules of Civil Procedure and the Local Rules of this Court, demands a trial by jury of all claims and issues so triable, and, for his Complaint against Defendant PLOT COMMERCE, hereby asserts and alleges as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff Jason Sheldon ("Sheldon") is an individual residing in West Midlands, United Kingdom.
2. Upon information and belief, Defendant Plot Commerce, d/b/a Charged.fm ("Charged.fm") is a corporation organized and existing under the laws of the State of Nevada,

and is registered to do business in the State of New York, with its principal place of business at 10 Jay Street, Suite 206, Brooklyn, New York, 11201. Charged.fm may be served at its principal place of business at 10 Jay Street, Suite 206, Brooklyn, New York, 11201.

3. Upon information and belief, Charged.fm owns the domain name and owns and operates the website at <http://www.charged.fm> (the “Charged.fm Website”).

4. This action arises under the Federal Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq.* This Court is vested with subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (copyright jurisdiction).

5. This Court has personal jurisdiction over Charged.fm by virtue of its presence in this District and its transacting, doing, and soliciting business in this District.

6. Venue is proper in this Court under 28 U.S.C. § 1400(a).

### **OPERATIVE FACTS**

7. Sheldon is a full-time professional photographer who specializes in event photography, including photography of bands and concert photography.

8. Sheldon was commissioned by the Express & Star newspaper as a freelance photographer to photograph singer Lana Del Rey performing in concert at the HMV Institute in Birmingham, United Kingdom on November 17, 2011. Sheldon was accredited to photograph Del Rey by Purple PR, who managed press issues for Del Rey’s 2011 concert tour in the United Kingdom.

9. Sheldon took several photographs of Del Ray at the HMV Institute on November 17, 2011, including the photograph shown below:



(the "Photograph").

10. In early 2012, Sheldon licensed the Photograph to IPC Media Entertainment Network for an editorial display of the Photograph on its website at <http://www.nme.com>, as shown below:

M&S  
EST. 1881

Get your free kit

WORLD'S BIGGEST COFFEE MORNING  
25 SEP  
WE ARE ALL PART OF THE M&S FAMILY

THIS WEEK'S MAG  
DIGITAL EDITION  
SUBSCRIBE

NME

HOME NEWS VIDEO TICKETS NEW MUSIC REVIEWS PHOTOS BLOGS FILM & TV FESTIVALS MAGAZINE MOST READ MOST SHARED SHOP

**LATEST BLOG POSTS**

**Lana Del Rey On SNL - And 5 Other Uncanny Musical Parodies**

By Rebecca Schiller Follow @rebeccaschiller Posted on Tuesday, February 7, 2012

You all remember that rather disastrous *Saturday Night Live* appearance from Lana Del Rey a few weeks ago, right? When she looked like, well, to use the words of Juliette Lewis, "a 12 year-old in their bedroom when they're pretending to sing and perform"?

Well, it ticked a lot of people off, but *SNL* stood by its gal with a pretty hilarious spoof last week. In case you missed it, watch Kristen Wiig's spot on LDR impression below:

CAKE TAKES US TOGETHER

Get your free kit

WE ARE MACMILLAN. CANCER SUPPORT

WORLD'S BIGGEST COFFEE MORNING  
25 SEP  
WE ARE ALL PART OF THE M&S FAMILY

LATEST TICKETS - BOOKING NOW

artist/city/venue	SEARCH
Paul Weller	BUY
The Family Rain	BUY
Disclosure	BUY

(the "NME Website").

11. The Photograph as displayed on the NME Website contained metadata embedded in its digital file, listing "Jason Sheldon" as the creator of the Photograph and "Jason Sheldon/EMPICS Entertainment" as the copyright holder of the Photograph (the "Sheldon Metadata").

12. In or around February 2015, Sheldon discovered through a Google Image search that Defendant had reproduced, modified, and displayed the Photograph on the Charged.fm



Website without Sheldon's authorization, upon information and belief, in or about September 2012.

13. Charged.fm continued reproducing and displaying the Photograph on the Charged.fm Website until at least March 25, 2015.

14. Upon information and belief, Charged.fm accessed the Photograph from the NME Website, then copied, cropped, and displayed it on several pages of the Charged.fm Website, including but not limited to the web pages as listed and shown below:

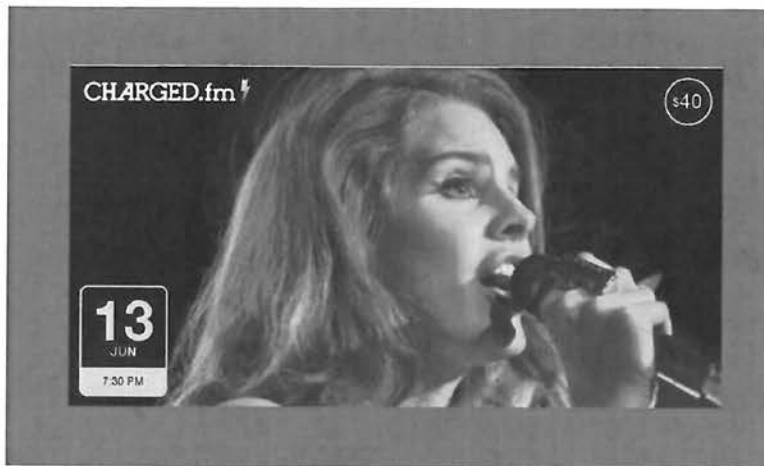
- [http://media.charged.fm/share/image/2740960/facebook/;](http://media.charged.fm/share/image/2740960/facebook/)



- [http://media.charged.fm/share/image/2740968/facebook/;](http://media.charged.fm/share/image/2740968/facebook/)



- [http://media.charged.fm/share/image/2740965/facebook/;](http://media.charged.fm/share/image/2740965/facebook/)



- [http://media.charged.fm/share/image/2740964/facebook/;](http://media.charged.fm/share/image/2740964/facebook/)



- [http://media.charged.fm/share/image/2740961/facebook/;](http://media.charged.fm/share/image/2740961/facebook/)



- <http://media.charged.fm/share/image/2740962/facebook/;>



- <http://media.charged.fm/share/image/2740966/facebook/;>



- <http://media.charged.fm/share/image/2740967/facebook/;>



- <http://media.charged.fm/share/image/2740963/facebook/;>



- [http://media.charged.fm/photos/file\\_5423a6ed311be.jpg;](http://media.charged.fm/photos/file_5423a6ed311be.jpg;)



- [http://media.charged.fm/photos/file\\_5423a6ed529b1.jpg](http://media.charged.fm/photos/file_5423a6ed529b1.jpg)





(collectively the “Website Uses”).

15. The Defendant did not include any attribution to Sheldon or any notice that he was the author or copyright owner of the Photograph on any of the Website Uses.

16. The Defendant did not include the Sheldon Metadata within any of the Website Uses of the Photograph.

17. The Defendant included its Charged.fm logo, which includes text of the name “Charged.fm,” on the upper-left corner of the Photograph (the “Charged.fm Watermark”) along with information regarding dates and ticket prices for upcoming concerts on at least nine of the Website Uses.

18. The Photograph in perspective, orientation, positioning, lighting and other details is entirely original, distinctive, and unique. As such, the Photograph is subject matter protectable under the Copyright Act.

19. Sheldon never authorized Charged.fm to reproduce, display, alter, or distribute the Photograph.

20. Sheldon is and always has been the proprietor of the right, title, and interest in and to the copyright in the Photograph. Sheldon is the author and copyright owner of the Photograph pursuant to 17 U.S.C. § 201.

21. Sheldon has complied with all respects with the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*, as amended, and all other laws and regulations governing copyrights and has secured the exclusive rights and privileges in and to the copyrights for the Photograph.

22. The Register of Copyrights for the U.S. Copyright Office issued to Sheldon a Certificate of Registration for the copyrights to the Photograph, number VA 1-957-422, effective April 17, 2015, as shown as Exhibit A.

23. On information and belief, Charged.fm is a ticket marketplace that advertises tickets via the Charged.fm Website and associated marketing tools.

24. On information and belief, Charged.fm's ticketing platform grossed nearly seventeen million dollars in revenue in 2014.

25. At all times relevant to the events in this action, Defendant to designate an agent to receive notification of claims of infringement with the U.S. Copyright Office, as required under 17 U.S.C. §512(c)(2).

26. On March 25, 2015, Sheldon, through counsel, sent a letter by mail and email to Charged.fm providing notice that the Photograph appeared on the Charged.fm Website without authorization of Sheldon or the law and presenting an offer to settle.

27. At the time of the filing of this Complaint, Charged.fm is still hosting and displaying an unauthorized reproduction of the Photograph on the Charged.fm Website at [http://media.charged.fm/photos/file\\_5423a6ed529b1.jpg](http://media.charged.fm/photos/file_5423a6ed529b1.jpg).

28. Despite multiple discussions between the parties regarding the facts of this matter and the relevant law, Charged.fm disclaimed liability and never engaged in settlement discussions.

### **FIRST CAUSE OF ACTION**

(Copyright Infringement - 17 U.S.C. § 101 *et seq.*)

29. Sheldon re-alleges and incorporates by reference paragraphs 1 through 28 above.

30. Charged.fm did not have authorization of Sheldon or the law to reproduce, distribute, display, or create derivative works of the Photograph.

31. Without authorization of Sheldon or the law, Charged.fm reproduced and displayed cropped versions of the Photograph in the Website Uses (collectively, the “Infringements”).

32. Charged.fm has not compensated Sheldon for the Infringements.

33. Charged.fm’s conduct violates the exclusive rights belonging to Sheldon as owner of the copyrights for the Photograph, including without limitation, Sheldon’s exclusive rights under 17 U.S.C. § 106.

34. As the Infringements began, upon information and belief, in or about September 2012 and continued until at least March 25, 2015, Sheldon’s claims are within the three-year statute of limitations period pursuant to 17 U.S.C. § 507(b).

35. As a direct and proximate result of its wrongful conduct, Charged.fm has realized and continues to realize profits and other benefits rightfully belonging to Sheldon for the Photograph. Accordingly, Sheldon seeks an award of actual damages and profits pursuant to 17 U.S.C. §§ 504(b).

## **SECOND CAUSE OF ACTION**

(False Copyright Management Information – 17 U.S.C. §§ 1201 *et seq.*)

36. Sheldon re-alleges and incorporates by reference paragraphs 1 through 28 above.

37. The Charged.fm Watermark constitutes copyright management information pursuant to 17 U.S.C. § 1202(c)(2), (3) and (7).

38. Charged.fm, without the authority of Sheldon or the law, knowingly and with the intent to induce, enable, facilitate, or conceal infringement, provided copyright management information that is false and distributed the Photograph with copyright management information that is false, in violation of 17 U.S.C. § 1202(a).



39. As a direct and proximate result of Charged.fm's wrongful conduct, Sheldon has suffered damages and so is entitled to the remedies set forth under 17 U.S.C. § 1203.

40. Specifically, Sheldon is entitled to and seeks actual damages pursuant to 17 U.S.C. § 1203(c)(2) for each violation.

41. In the alternative, Sheldon is entitled to and seeks statutory damages pursuant to 17 U.S.C. § 1203(c)(3)(B) for each violation, and costs of litigation and attorneys' fees pursuant to 17 U.S.C. § 1203(b)(4-5).

### **THIRD CAUSE OF ACTION**

(Removal or Alteration of Copyright Management Information – 17 U.S.C. §§ 1201 *et seq.*)

42. Sheldon re-alleges and incorporates by reference paragraphs 1 through 28 above.

43. The Sheldon Metadata constitutes copyright management information pursuant to 17 U.S.C. § 1202(c)(2), (3) and (7).

44. Upon information and belief, Charged.fm without the authority of Sheldon or the law intentionally removed Sheldon's copyright management information and displayed and distributed the Photograph on at least nine distinct web pages on the Charged.fm Website, knowing that Sheldon's copyright management information had been removed and knowing or having reasonable grounds to know that such removal or alteration would induce, enable, facilitate, or conceal a copyright infringement, in violation of 17 U.S.C. § 1202(b).

45. As a direct and proximate result of Charged.fm's wrongful conduct, Sheldon has suffered damages and so is entitled to the remedies set forth under 17 U.S.C. § 1203.

46. Specifically, Sheldon is entitled to and seeks actual damages pursuant to 17 U.S.C. § 1203(c)(2) for each act of removal and display.



47. In the alternative, Sheldon is entitled to and seeks statutory damages pursuant to 17 U.S.C. § 1203(c)(3)(B), and costs of litigation and attorneys' fees pursuant to 17 U.S.C. § 1203(b)(4-5).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Jason Sheldon prays that this Honorable Court:

1. Order that Charged.fm's unauthorized conduct violates Sheldon's rights under the Federal Copyright Act at 17 U.S.C. §101, et seq.;
2. Order Charged.fm to account to Sheldon for all gains, profits, and advantages derived from the unauthorized use of the Photograph;
3. Award Sheldon all profits and actual damages in such amount as may be found pursuant to 17 U.S.C. § 504(b) (with interest thereon at the highest legal rate) for the infringements of Sheldon's copyright in the Photograph;
4. Award Sheldon actual damages suffered and profits for each violation of 17 U.S.C. § 1202(a), pursuant to 17 U.S.C. § 1203(c)(2) (with interest thereon at the highest legal rate); or such other amount as may be proper pursuant to 17 U.S.C. 1203;
5. In the alternative, if Sheldon so elects, award Sheldon maximum statutory damages in the amount of \$25,000 for each unauthorized violation of 17 U.S.C. § 1202(a) pursuant to 17 U.S.C. § 1203(c)(3)(B), or such other amount as may be proper pursuant to 17 U.S.C. § 1203;
6. Award Sheldon actual damages suffered and profits for each violation of 17 U.S.C. § 1202(b), pursuant to 17 U.S.C. § 1203(c)(2) (with interest thereon at the

highest legal rate); or such other amount as may be proper pursuant to 17 U.S.C. 1203;

7. In the alternative, if Sheldon so elects, award Sheldon maximum statutory damages in the amount of \$25,000 for each unauthorized violation of 17 U.S.C. § 1202(b) pursuant to 17 U.S.C. § 1203(c)(3)(B), or such other amount as may be proper pursuant to 17 U.S.C. § 1203;
8. Award Sheldon his costs of litigation, reasonable attorneys' fees and disbursements in this action, pursuant to 17 U.S.C. §1203;
9. Order Charged.fm to deliver to Sheldon all copies of the Photograph and all other materials containing such infringing copies of the Photograph in Charged.fm's possession, custody or control;
10. Order Charged.fm, its agents, and servants to be enjoined during the pendency of this action and permanently from infringing the copyrights of Sheldon in any manner and from reproducing, distributing, displaying, or creating derivative works of the Photograph; and
11. For such other and further relief as this Honorable Court deems just and proper.

#### **JURY DEMAND**

Sheldon demands a trial by jury on all issues so triable.

Respectfully submitted, this 1st day of September, 2015.

*Kalpana Nagampalli*

Kalpana Nagampalli (KN-2807)

Stephen E. Feldman (SF-5630)

FEDMAN LAW GROUP, P.C.

220 E.42<sup>nd</sup> Street, Suite 3304

New York, New York 10017

Phone: 212-532-8585

E-mail: [kalpana@feldman-law.com](mailto:kalpana@feldman-law.com)

*Attorneys for Plaintiff Jason Sheldon*

## **Exhibit A**



## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*

Register of Copyrights, United States of America

**Registration Number**

**VA 1-957-422**

**Effective Date of Registration:**

April 17, 2015

### Title

**Title of Work:** Photographs of Lana Del Rey performing in concert, 17 November 2011, in Birmingham, United Kingdom

**Previous or Alternate Title:** Group registration of published photographs; 36 photographs published November 18, 2011

### Completion/Publication

**Year of Completion:** 2011

**Date of 1st Publication:** November 18, 2011

**Nation of 1st Publication:** United Kingdom

### Author

• **Author:** Jason Sheldon

**Author Created:** photograph

**Work made for hire:** No

**Citizen of:** United Kingdom

**Year Born:** 1971

### Copyright Claimant

**Copyright Claimant:** Jason Sheldon  
458 Sutton Road, Walsall, WS5 3AZ, United Kingdom

### Rights and Permissions

**Organization Name:** Junction10 Photography

**Name:** Jason Sheldon

**Email:** jason@junction10.net

**Telephone:** +447973618503

**Address:** 458 Sutton Road  
Walsall WS5 3AZ United Kingdom

### Certification